

# Module I

Course: USDA Civil Rights Overview  
Module I: Equal Employment Opportunity

## Lesson C

### Alternative Dispute Resolution

**Description:** In this lesson, you will look at the concepts, principles and activities of alternative dispute resolution (ADR).

**Objectives:** Upon completion of this lesson, you will:

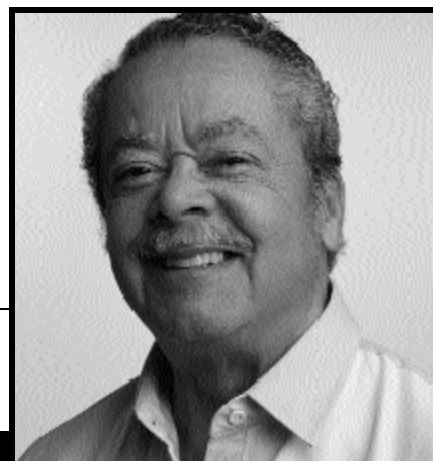
- Become aware of ADR and its role in Equal Employment Opportunity conflict resolution.
- Identify mediation principles and procedures.

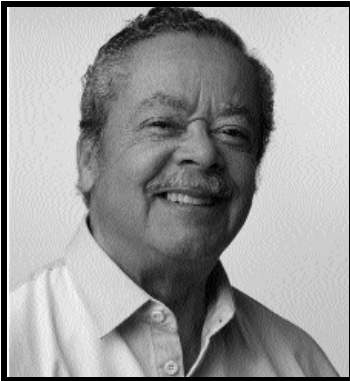
Listed below are the **topics** associated with this lesson.

Topic 1 Introduction to Alternative Dispute Resolution

Topic 2 Mediation

Topic 3 Informal Resolution Procedures





## Lesson C

### Alternative Dispute Resolution (ADR)

#### Topic 1: Introduction to ADR

If someone believes that he or she has been discriminated against at work, he or she should immediately **contact an Equal Employment Opportunity (EEO) counselor** within 45 days of the alleged discriminatory conduct to discuss the matter. As of January 1, 2000, one of the many ways that the USDA attempts to resolve discrimination complaints is through the Alternative Dispute Resolution (ADR) process.

ADR is a voluntary mediation process available both during the **pre-complaint** (counseling) and the **formal complaint** stages. ADR uses a variety of dispute resolution techniques that involve an impartial, trained third party. The goal of ADR is to help people reach a resolution to their dispute, informally and quickly.

#### Some ADR core principles are:

<b>Self-determination</b>	Mediation is based on the voluntary participation of all parties.
<b>Impartiality</b>	ADR proceedings are mediated by an impartial third party.
<b>No Conflicts of Interests</b>	All actual and potential conflicts of interests reasonably known must be disclosed.
<b>Confidentiality</b>	Reasonable expectations of the parties with regard to confidentiality of the matters discussed are to always be maintained.
<b>Representation</b>	All parties may have a representative present during an ADR process.
<b>Quality of the Process</b>	Mediation is conducted fairly and diligently and the mediator should have the necessary qualifications to satisfy the reasonable expectations of the parties.





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Alternative Dispute Resolution (ADR)

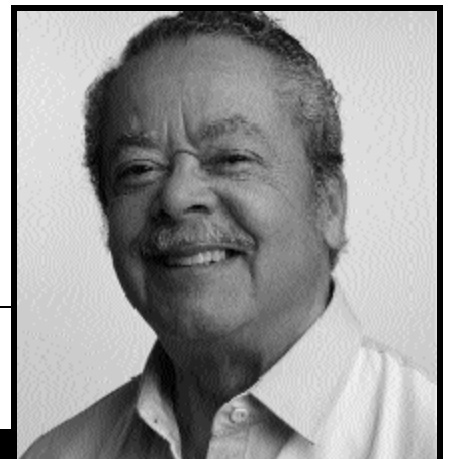
Topic 1: Introduction to ADR

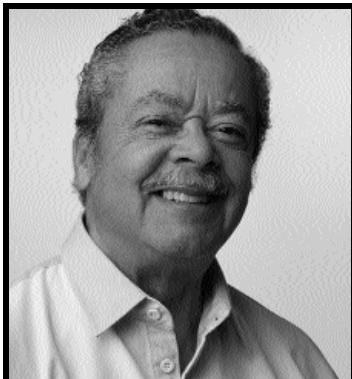
### Example

#### *The APHIS ADR Program*

The Animal and Plant Health Inspection Service (APHIS) agency has an Alternative Dispute Resolution (ADR) program. By using ADR, the parties themselves voluntarily develop the agreement. As a result, compliance with the terms of the agreement are much higher than with other forms of resolution. This process does not declare a winner or a loser, instead, ADR assists the parties in resolving their conflict in a mutually beneficial manner. To date most mediations that have taken place have resulted in a win-win resolution for all parties.

When an individual contacts the ADR office and indicates a willingness to engage in mediation, the other party is contacted. If both parties are willing to participate in mediation, the ADR office arranges for an impartial mediator and for a facility. Mediations are held away from the general workplace to ensure confidentiality. No records are kept other than the agreement. No records are put in an employee or other party's personnel file.





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### Alternative Dispute Resolution (ADR)

#### Topic 1: Introduction to ADR

### Exercise

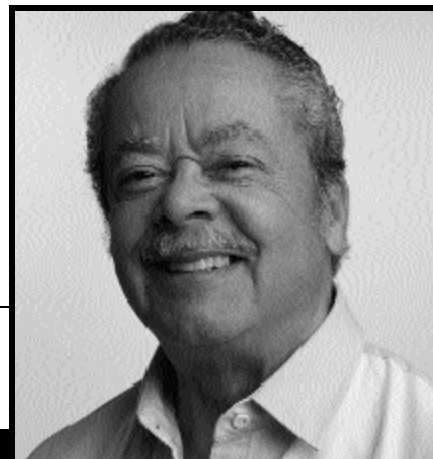
#### *Mr. Gonzalez's EEO Complaint*

Read the following complaint and then select all the correct statements regarding Alternative Dispute Resolution.

Mr. Gonzalez, an Animal Health Technician, claims that he has been discriminated against by his supervisor, Mr. Johnson, because Mr. Gonzalez is Hispanic. Mr. Gonzalez has been passed over for promotion each of the last three years. Mr. Gonzalez asserts that he has more years' experience as an Animal Health Technician than his White co-workers who have been promoted ahead of him. So he decides to contact his agency's EEO counselor.

#### Select ALL of the CORRECT statements:

- \_\_\_\_\_ **Statement A:** At both the informal and formal stages of his complaint, Mr. Gonzalez may elect to participate in the Alternative Dispute Resolution program.
- \_\_\_\_\_ **Statement B:** The appointed mediator is an unbiased professional with no stake in the outcome of the mediation process.
- \_\_\_\_\_ **Statement C:** During the mediation session, tape recorders and transcription devices are not used, and all notes taken during the mediation are destroyed. However, if there is no resolution to the dispute, the information obtained from the session can be used in later EEOC investigative activities.
- \_\_\_\_\_ **Statement D:** Mr. Gonzalez can bring a representative to help him during the mediation session.





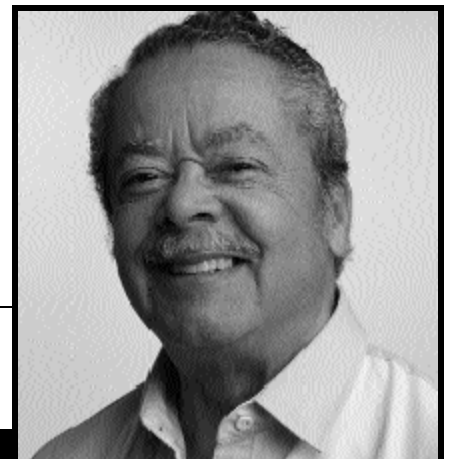
## Lesson C

Alternative Dispute Resolution (ADR)

Topic 1: Introduction to ADR

### Exercise Answers

- If **A** is selected **That's right!** The whole mediation process is entirely voluntary for both parties.
- If **B** is selected **Correct.** This is a true statement. The mediator is a neutral, unbiased third party.
- If **C** is selected **Incorrect.** No information, record or document supplied during the mediation proceedings can be used outside of those meetings.
- If **D** is selected **Correct.** This is a true statement. Both parties may have a representative present during the ADR process.





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### Alternative Dispute Resolution (ADR)

#### Topic 2: Mediation

Mediation is the most popular form of ADR used in employment-related disputes. Mediation is an intervention in a dispute or negotiation using an approved and **impartial third party** who has no decision-making authority.

The mediator makes primarily procedural suggestions about how the parties can reach an agreement. The mediator **may suggest options** to encourage the parties to expand the range of possible solutions under consideration. The mediator will work with the parties individually, or together, to explore acceptable resolutions or to develop proposals that might move the parties closer to resolution.





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### Alternative Dispute Resolution (ADR)

#### Topic 2: Mediation

### Example

#### *The Mediator*

*Andrea Sharp, a 34-year-old White female, the alternative dispute mediator  
Janice Lawrence, a 29-year-old White female, the aggrieved person  
Cheryl Sachs, a White female in her late twenties, Janice's representative  
Tonia Overlay, a Black female in her early thirties, Janice's supervisor*

Andrea says, "Good morning. My name is Andrea Sharp and I am a certified mediator. Ms. Lawrence has chosen the USDA's Alternative Dispute Resolution process as the forum to informally resolve her allegation of discrimination. Our purpose here today is to attempt to achieve a settlement of Ms. Lawrence's complaint."

"I am here, as a neutral party, to help facilitate this attempt. I do not have the authority to make this decision for you and this is not a legal proceeding. Each party will have a chance to speak and what is said in this room will be kept confidential. Thank you all for agreeing to participate and after we have dealt with any questions you have, we will begin."





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Alternative Dispute Resolution (ADR)

Topic 2: Mediation

### Exercise

#### *Working Toward a Solution*

Andrea says, "Janice, am I correct in understanding that you would consider this issue resolved if Ms. Overlay would apologize to you and agree to assign you to the next two audit teams?"

Janice responds, "Yes, that's right. I don't want what I'm not qualified for; I just want an equal chance for promotion by being assigned to future detail assignments."

Andrea asks the supervisor, "Ms. Overlay, what do you think about Andrea's request--is it acceptable to you?"

***Is Ms. Overlay required to accept the proposed solution if the mediator feels that the solution is fair and reasonable?***

**Yes**

**No**







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Alternative Dispute Resolution (ADR)

Topic 2: Mediation

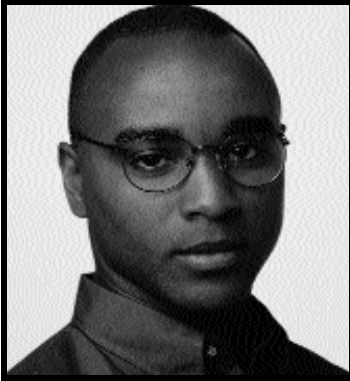
### Exercise Answers

*Is Ms. Overlay required to accept the proposed solution if the mediator feels that the solution is fair and reasonable?*

**The correct answer is No.**

The mediator in an Alternative Dispute Resolution has NO decision-making authority. The mediator can only make recommendations to encourage both parties to come to a mutually acceptable solution.





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### Alternative Dispute Resolution (ADR)

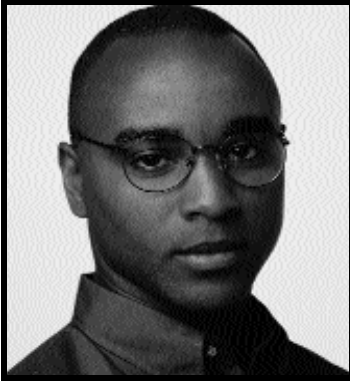
#### Topic 3: Informal Resolution Procedures

There is a range of informal resolution procedures. Two of the most common are:

**Fact Finding:** This procedure uses an impartial expert (or group) with the authority to appoint a fact finder to determine the facts in the dispute. The fact finder is authorized only to investigate or evaluate the matter presented and to file a report establishing the facts in the matter. The fact finder provides a recommendation of the most likely outcome of the dispute.

**Ombuds:** These are individuals who rely on a number of techniques to resolve disputes. These techniques include counseling, mediating, conciliating and fact finding. When a complaint is received, an ombud interviews the parties, reviews files and makes recommendations to the individuals.





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Alternative Dispute Resolution (ADR)

Topic 3: Informal Resolution Procedures

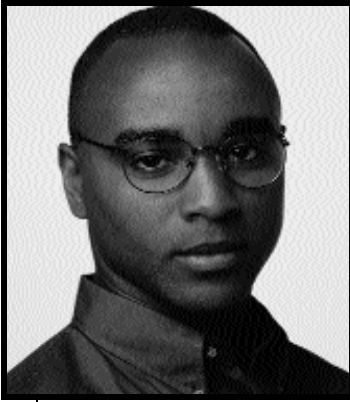
### Example

#### *Getting To the Heart Of the Issue*

The USDA Conflict Prevention and Resolution Center handles employment discrimination complaints within the USDA using Alternative Dispute Resolution. For example, some USDA employees have complained of intimidation, threats and retaliation by managers when employees complain of discrimination. By using ADR principles, the employee and his or her supervisor can try to resolve work-related issues in a timely and informal manner using a trained mediator.

The mediator or fact finder will conduct an inquiry into the matter by looking at relevant records and files, and by talking to people who might have additional facts about the case. The fact finder will then evaluate the matter and file a report establishing the facts in the case. The most important benefit of fact finding is the expectation that the opinion of a trusted and impartial professional will carry weight with the parties involved.





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Alternative Dispute Resolution (ADR)

Topic 3: Informal Resolution Procedures

### Exercise

*Some ADR Procedures*

**Match the term below with the correct definition.**

\_\_\_\_\_ The person authorized to investigate or evaluate a dispute and file a report establishing the facts in the case.

\_\_\_\_\_ A person using a number of techniques to resolve a dispute. These techniques can include counseling, mediating, conciliating and fact finding.

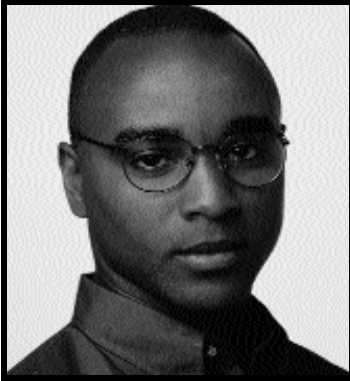
A. Arbitrator

B. Fact Finder

C. Ombuds

D. Representative





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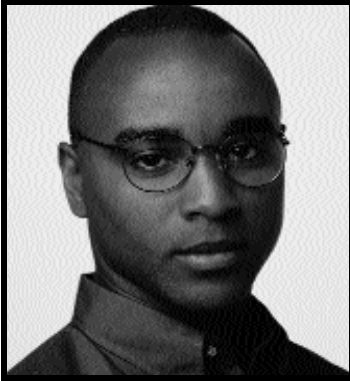
Alternative Dispute Resolution (ADR)

Topic 3: Informal Resolution Procedures

### Exercise Answers

- B. Fact Finder      The person authorized to investigate or evaluate a dispute and file a report establishing the facts in the case.
- C. Ombuds          A person using a number of techniques to resolve a dispute. These techniques can include counseling, mediating, conciliating and fact finding.





## Lesson C

### Alternative Dispute Resolution (ADR)

#### Lesson Summary

**1. Alternative Dispute Resolution (ADR) refers to a variety of dispute resolution techniques that involve: (Select one.)**

- A. Courtroom appearances
- B. Public disclosure of the proceedings
- C. An impartial third party
- D. Mandatory participation

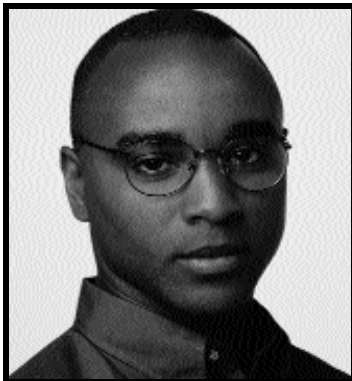
**2. During the mediation process, a mediator works with:**

- A. Outside personnel to resolve the matter
- B. Other mediators to reach an agreement
- C. The parties individually or together to explore acceptable resolution options
- D. Management personnel only, in attempting to resolve the matter

**3. The two most common informal resolution procedures are: (Select all that apply.)**

- A. Arbitration
- B. Fact finding
- C. Hearings
- D. Ombuds





## Lesson C

### Alternative Dispute Resolution (ADR)

#### Lesson Summary Answers

**1. Alternative Dispute Resolution (ADR) refers to a variety of dispute resolution techniques that involve:**

*The correct answer is C. ADR is an informal process that is confidential and voluntary involving an impartial third party.*

**2. During the mediation process, a mediator works with:**

*The correct answer is C. During mediation, the parties are encouraged to expand the range of possible solutions under consideration or to develop proposals that might move the parties closer to resolution.*

**3. The two most common informal resolution procedures are: (Select all that apply.)**

*The correct answers are B and D. Although both arbitration and hearings may be used as methods of Alternative Dispute Resolution, the two most common informal resolution procedures are fact finding and use an ombuds. Since arbitration and hearings involve a third party making the decision, they are not considered as informal as fact finding and the use of an ombuds.*

